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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,837	01/11/2001	Xiao Wei Hu	14154 (JP919990264US1)	1902
7590	06/07/2004		EXAMINER	
SCULLY, SCOTT, MURPHY & PRESSER 400 Garden City Plaza Garden City, NY 11530			HARRELL, ROBERT B	
			ART UNIT	PAPER NUMBER
			2142	6
DATE MAILED: 06/07/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/759,837	HU ET AL.
	Examiner	Art Unit
	Robert B. Harrell	2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 11 January 2001 et al.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-22 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-22 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 11 January 2001 is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ .

5) Notice of Informal Patent Application (PTO-152)

6) Other: see attached *Office Action*

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1. Claims 1-22 are presented for examination.
2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
3. The Oath or Declaration is defective because Xiao Yan Chen citizenship is lacking. A New Oath/Declaration is required in accordance with the Laws and Rules.
4. The textual portion of the specification is replete with grammatical and idiomatic errors to numerous to mention specifically (ie., see [page 1 (last line) to page 1 (line 1) which inserts "JP9119990264US] "). The whole of the application should be closely reviewed carefully not just for typographical errors but other overseen errors. No New Matter shall be entered.
5. Claims 1-22 are rejected under 35 U.S.C 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The scope of meaning of the following claim language is not clear:
 - a) "the third party"--claim 1 (line 4);

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b) "said workload interface"--claim 1 (lines 13-14) [note lines 6 and 8 of claim 1; which one?]; and,

c) "the other components"--claim 12 (line 5).

6. As to 5(a-c) above, these are but a few example from a set of numerous cases where clear antecedent bases are lacking and not an exhausting recital. Any other term(s) or phrase(s) overlooked by examiner and not listed above which start with either "the" or "said" and do not have a single proper antecedent bases also is indefinite for the reasons outlined in this paragraph. Also, these are but a few examples where term(s) or phrase(s) are introduced more than once without adequate use of either "the" or "said" for the subsequent use of the term(s) or phrase(s). Moreover, multiple introduction of a term, or changes in tense, results in a lack of clear antecedent bases for term(s) or phrase(s) which relied upon the introduced term. Failure to correct all existing cases where clear antecedent bases are lacking can be viewed as non-responsive. The applicant should use the period for response to closely review all the claims for compliance with 35 U.S.C. 112.

7. The recited "third party" in the claims (ie., claim 1 and 12 specifically) cannot be disguised from any other client recited in the claims. A client is a client unto a server and thus a

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third party is also a client if so connected either directly or by proxy to the server. Thus examiner assumes "third party" is yet just another client or a client that proxy for the third party and thus is also connected to the server as best described in light of the specification with respect to figure 2 (100) and/or figure 4 (1000).

8. Per claim 10, there is a long space gap, are words missing?
9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-22 are rejected under 35 U.S.C. 102 (b) as being clearly anticipated by Wagle (5,790,425).

11. To the best examiner is able to understand the claims in light of the above 35 U.S.C. 112, second paragraph matters, the following is forwarded in the spirit of compact prosecution. The following citations, tough not required, to figures and text are only a subset and not the only citations that can be made.

12. Wagle taught a method (eg., see Abstract (line 1)) for testing ("benchmark") server (eg., see Abstract (line 2)) with

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mixed workloads (eg., see col. 1 (lines 26-30) and col. 3 (lines 54-56 "different workloads"; that is, "different" implies a mix), where multiple clients serving as agents (eg., see figure 3 (308)) and controlling device (eg., see figure 3 (302)) are connected with a server under test (eg., see figure 3 (314)) via a network (eg., see figure 3 (306)), characterized in that: comprising steps of:

- a) a third party develops one or more workload case configure utilities corresponding to one or more workload cases (eg., see figure 3 (312)), each of the utilities implements a workload case configure utility interface (API of col. 3 (line 54) (eg., see col. 2 (lines 21-33 (notice the thrust gives emphases with "different" such as different with respect to the normal client implying "third party" or something different than the norm in the system)), col. 3 (lines 50-57) or see figure 4 (404,406)));
- b) the third party develops one or more workload engines (eg., see figure 3 (310)) corresponding to one or more workload case, each of the engines implements a workload interface (eg., see figure 5 and col. 4 (line 65-*et seq.*) or see figure 4 (408));
- c) the controlling device configures workload cases by calling corresponding ones of the workload case configure utilities through the workload case configure utility interface, and

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transfers the information collected during the configure process to corresponding agents (eg., see figure 4, Abstract and col. 3 (line 57-*et seq.*) or see figure 4 (410,412));

d) each of the agents controls corresponding workload engine through the workload interface to generate workload requests by using the information collected during the configure process (eg., see col. 5 (lines 21-32) or the whole of figure 5 with figure 4 (412)); and,

e) the controlling device collects response information from all the agents, and generates test results (eg., see figure 4 (416)).

13. Per claim 2, see col. 4 (lines 26-45) which permits the framework the insertion of other utilities which is further suggested in col. 3 (lines 50-57).

14. Per claim 3, such is part of the creation setup covered in col. 5 (lines 7-20).

15. Per claims 4-6, such is shown in figure 3 with control device (302) as the manager object and the engines in the clients as the client objects with communications via the LAN 306.

16. Per claims 7-12, such was covered starting with col. 3 (line 63-*et seq.*) [not the word "what" which is "selecting" steps].

17. Per claims 13-22, these claims do not teach or defined above the correspondingly rejected claims given above, and are thus

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rejected for the same reasons given above.

18. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (703) 305-9692. The examiner can normally be reached Monday thru Friday from 5:30 am to 2:00 pm and on weekends from 6:00 am to 12 noon Eastern Standard Time.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack B. Harvey, can be reached on (703) 308-9705. The fax phone numbers for the Group are (703) 746-7238 for After-Final, (703) 746-7239 for Official Papers, and (703) 746-7240 for Non-Official and Draft papers.

21. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.



ROBERT B. HARRELL
PRIMARY EXAMINER
GROUP 2142